

Message Text

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SUBJECT: OPINION ON MINERALS EXPLORATION - TTPI

DOTA NO. 171-TT

PLEASE PASS TO FRED M. ZEDER, DIRECTOR OF TERRITORIAL AFFAIRS.
FOLLOWING IS ASSISTANT SOLICITOR C. BREWSTER
CHAPMAN'S OPINION ON MINERALS EXPLORATION:

ON JANUARY 5, 1972, A PERMIT TO DO BUSINESS IN THE TTPI WAS
ISSUED TO PALAU MINING ASSOCIATES FOR THE PURPOSE OF
"EXPLORING, DEVELOPING AND MINING BAUXITE DEPOSITS ONLY IN
PALAU DISTRICT OF THE TRUST TERRITORY OF THE PACIFIC
ISLANDS."

ON JULY 23, 1972, PALAU MINING ASSOCIATES SECURED 20-YEAR
PERMITS FROM THE MUNICIPALITIES OF NGEREMLENGUI AND
NGARDMAU FOR "THE SOLE RIGHT TO EXPLORE, DEVELOP, AND
EXPORT ANY AND ALL BAUXITE" WITHIN THOSE MUNICIPALITIES
CLAIMED BY THE PEOPLE UNDER THE TRADITIONAL LAND CUSTOMS
OF PALAU. THE LAND CLAIMS OF THESE PEOPLE ARE IN CONFLICT,
IN PART AT LEAST, WITH CLAIMS BY THE TTPI GOVERNMENT TO THE
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SAME LANDS AS PUBLIC DOMAIN, AND THE RIGHTS GRANTED WERE

MADE SUBJECT TO A FINAL RESOLUTION OF THESE DISPUTES. IT IS ASSUMED THAT THE JANUARY 5, 1972 BUSINESS PERMIT AND THE

PERMITS FROM THE MUNICIPALITIES ARE STILL VALID IN ACCORDANCE WITH THEIR RESPECTIVE TERMS.

ON JULY 18, 1975, THE TTPI GOVERNMENT ENTERED INTO AN AGREEMENT WITH THE MINERALS EXPLORATION COMPANY UNDER WHICH THE COMPANY WAS GIVEN THE "EXCLUSIVE RIGHT" FOR A PERIOD OF ONE YEAR TO ENTER THE PUBLIC LANDS AND, WITH PROPER PERMISSION, PRIVATE LANDS IN DISTRICTS OF PALAU, YAP, PONAPE, TRUK AND THE MARSHALL ISLANDS FOR "THE PURPOSES OF CONDUCTING INITIAL SCIENTIFIC TYPE EXPLORATIONS AND RECORDING THE PRESENCE OF, AMONG OTHERS, BAUXITE, ILMENITE, MAGNETITE, PHOSPHORITE, RUTILE AND ZIRCON." THE AGREEMENT GOES ON TO PROVIDE THAT IF THE COMPANY'S INITIAL EFFORTS INDICATE THE PRESENCE OF MINERALS WHICH WARRANT FURTHER EXPLORATION AND TESTING, THE GOVERNMENT WILL RECOMMEND THE ISSUANCE OF A BUSINESS PERMIT GIVING THE COMPANY THE "EXCLUSIVE RIGHT TO ENTER INTO SPECIFIC AREAS AND CONDUCT ADDITIONAL EXPLORATION ACTIVITIES DESIGNED TO FURTHER IDENTIFY THE PRESENCE AND EXTENT OF SUCH MINERALS AND, IF COMMERCIALY FEASIBLE IN THE JUDGMENT OF THE CONTRACTOR, TO DEVELOP, PRODUCE AND MARKET SUCH MINERALS SUBJECT TO SUCH TERMS AND CONDITIONS AS THE GOVERNMENT SHALL PRESCRIBE."

IT SEEMS APPARENT FROM THE FOREGOING RECITAL THAT THERE IS A FUNDAMENTAL CONFLICT BETWEEN THE AUTHORITY GRANTED PALAU MINING ASSOCIATES IN ITS BUSINESS PERMIT AND THE RIGHTS GRANTED MINERAL EXPLORATION COMPANY UNDER THE AGREEMENT, AT LEAST AS THEY RELATE TO THE EXPLORATION FOR BAUXITE IN PALAU. I SERIOUSLY QUESTION, MOREOVER, WHETHER THE GOVERNMENT CAN GIVE TO ONE COMPANY AN EXCLUSIVE RIGHT TO, AMONG OTHER THINGS, EXPLORE FOR MINERALS, INCLUDING BAUXITE, IN PALAU WHERE IT HAD ALREADY GIVEN AUTHORITY TO ANOTHER COMPANY TO EXPLORE FOR, DEVELOP AND MINE BAUXITE DEPOSITS ONLY IN THE PALAU DISTRICT. ADMITTEDLY, THE BUSINESS PERMIT GIVEN TO PALAU MINING ASSOCIATES ONLY AUTHORIZES IT TO ENGAGE IN THE BUSINESS OF

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EXPLORING FOR AND MINING BAUXITE WHILE THE AGREEMENT WITH MINERALS EXPLORATION COMPANY APPEARS TO GIVE IT A PERMIT TO GO ON PUBLIC LANDS FOR EXPLORATION PURPOSES. HOWEVER, PALAU MINING ASSOCIATES, PURSUANT TO ITS PERMIT, HAS SECURED FROM THE MUNICIPALITIES OF NGEREMLENGUI AND NGARDMAU "SOLE RIGHTS" FOR THE EXPLORATION AND MINING OF BAUXITE. THESE RIGHTS ARE, I PRESUME, BASED UPON A SUCCESSFUL RESOLUTION BY THE PEOPLE OF THE MUNICIPALITIES

OF THEIR CLAIMS TO THE LANDS IN QUESTION, PARTICULARLY
SINCE, IF THE TTPI GOVERNMENT IS SUCCESSFUL IN CLAIMING
THEM AS PUBLIC DOMAIN, IT WOULD APPEAR THAT MINERALS
EXPLORATION COMPANY WOULD HAVE A PERMIT TO THEM UNDER ITS
AGREEMENT OF COURSE, THE MINERALS EXPLORATION COMPANY
AGREEMENT EXPIRES IN JULY OF THIS YEAR, AND, IF THEY HAVE
DONE NOTHING, THE WHOLE QUESTION COULD BE MOOTED. NEVER-
THELESS, THE EXCLUSIVITY OF THEIR RIGHTS APPEARS TO
STAND AS A POTENTIAL BARRIER TO ANY ACTIVITY BY PALAU
MINING ASSOCIATES, AT LEAST UNTIL THE AGREEMENT EXPIRES.
I WOULD RECOMMEND THAT THIS ENTIRE MATTER BE BROUGHT TO
THE ATTENTION OF THE HIGH COMMISSIONER FOR RESOLUTION.
I WOULD ALSO RECOMMEND THAT THE CONGRESS OF MICRONESIA BE
URGED, WITH THE ASSISTANCE OF THE HIGH COMMISSIONER AND
THIS DEPARTMENT, TO ESTABLISH A SENSIBLE AND UNIFORM
PROCEDURE FOR THE EXPLORATION AND EXPLOITATION OF ITS
POTENTIAL MINERAL RESOURCES. END OF TEXT.
ACTING DOTA RICE SENDS.

ROBINSON

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